

P.O. Box 219 Owyhee, Nevada 89832-0219 (775) 757-3161

00 MAR 27 P3:01

March 21, 2000

The Secretary
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555-001
Attention: Rulemakings and Adjudications Staff



Dear Mr. Secretary:

Enclosed you will find comments from the Shoshone-Paiute Tribes concerning the Nuclear Regulatory Commission's (NRC) proposed *Advanced Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste*, 10 CFR Parts 71 and 73, Federal Register, Volume 64, No. 244.

Comments

The Shoshone-Paiute Tribes does endorse the NRC's amendment to its regulations that would require NRC licensees to notify Native American Tribes of shipments of certain types of high-level radioactive waste, including spent nuclear fuel, prior to the transportation to or across the boundaries of tribal lands. Ideally, this waste should not be shipped through reservations at all. But in the instance where the shipments must travel through reservation boundaries, the NRC does have an obligation to notify the Tribes in the same manner as it currently notifies State governors. NRC regulations require that NRC licensees inform State governors of certain radioactive waste shipments that are transported through state lands. The NRC should extend the same courtesy to Native American Tribes as the radioactive waste shipments are shipped through Tribal lands.

In accordance with Part 71, a licensee must notify the governor of a State, or the governor's designee, in writing, prior to a shipment of radioactive waste or nuclear fuel across state lands. This section should also include notification to a Tribal chairman or environmental program director of a Tribe that when a shipment of radioactive waste or nuclear fuel is to be transported through Native American lands.

Specific Considerations

Section A

- A.1. When developing a list of tribal contacts, the NRC should refer to the list of Federally recognized Native American Tribes maintained by the Bureau of Indian Affairs. After consulting the list, the NRC should personally contact each Tribe for the current Tribal Chairman and environmental program contact.
- A.2. To keep the contact information current for Tribes, the NRC should contact each Tribe on a yearly basis. This will ensure that the proper contact person is on the NRC's list.
- A.3. As most Tribes are located in remote areas of the United States, around-the-clock contacts might not be possible. A feasible alternative would be to contact the local Native American law enforcement agency that which would then contact the proper person(s) within the Tribal structure.

Section B

- B.1. There are 565 Federally recognized Tribes. Not all of these Tribes would have nuclear fuel or waste shipments impacting their lands. A simple, current tracking database should help the NRC with its administrative burden.
- B.2. If a shipper is unable to make contact with a Tribe prior to shipment, that shipment SHOULD NOT proceed until the proper Tribal authorities are notified.

Section C

- C.1. The NRC licensees can effectively locate Native American Tribes along a particular vehicle route by contacting the Bureau of Indian Affairs. The Bureau of Indian Affairs is familiar with all the Tribes located in the BIA's respective regions and areas. Licensees may also reference maps that indicate Native American Reservations.
- C.2. The DOE and NRC should develop and maintain a current database regarding the location of Tribal lands. The DOE and NRC should also write to Tribes on proposed routes to ensure that Tribal lands and/or contacts have not changed. GIS resources would be very helpful to the licensees in locating and maintaining a Tribal routing database.
- C.3. All types of Native American lands should be considered in the proposed rule. This would include trust lands, fee lands, and any other lands owned by Native American Tribes. This land might not necessarily be held in trust by the U.S. Government but would still be considered tribal lands.

Section D

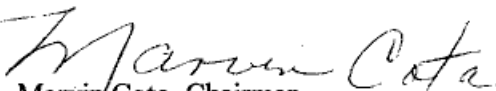
- D.1 Advance notice of nuclear shipments through Indian Lands should be given to the Tribes whose boundaries the waste will enter.
- D.2 Tribes should be included in 10 CFR 73.21 as an entity to notify when NRC licensees are shipping nuclear waste through tribal lands.
- D.3 Perhaps a utilizing a mechanism, such as a discreet MOUs with Tribes, would ensure the safeguarding of the nuclear waste shipments information. Tribes are probably more concerned with the safe transport of waste through Tribal lands as they pose a human health and environmental risk to reservations. It seems highly likely that the Tribes would be more concerned with making the safeguards information confidential as it would be to their benefits. Tribes would not want any nuclear terrorism to occur within Tribal boundaries. Benefits to be gained from Tribal notification would be for the Tribes and NRC licensees. It would allow Tribes to have emergency preparedness and response plans in place. It would allow Tribes to fully participate in issues that concern Tribal lands. Participation by Tribes would help ensure the welfare of the Tribal residents.
- D.4 The point of contacts for Tribal safeguards information would be the Tribal chairman and/or the Tribal environmental director. Tribal police should also be part of this information chain as they are entrusted with the responsibility of protecting reservation residents.

Mr. Secretary
March 21, 2000
Page 3

- D.5 If any resources are to be expended implementing the Safeguards Information system on reservations, the NRC licensees or the DOE should assume the financial responsibility. Most Tribes do not have the resources to maintain such a system. This financial responsibility should also include the implementation of emergency preparedness plans on Tribal lands that will assist the Tribes in dealing with nuclear waste transportation issues.
- D.6 If the NRC is to review any such Safeguards Information on Tribal Lands, the review should be conducted with the Tribes consent. If there is to be such a review of the Tribal plans, it must be conducted by a committee composed of the Tribes, the U.S.-Environmental Protection Agency, and the Bureau of Indian Affairs. Tribes are sovereign nations and must be treated as such. The EPA and the BIA have Trust Responsibility towards the Tribes and will consider if such a review is beneficial to the Tribes.
- D.9 10 CFR 73.37 must not be changed to a permissive form. The licensees must be continued to be required to release Safeguards Information to the responsible Tribal government officials. To make such a change would not guarantee the public's safety.

The Shoshone-Paiute Tribes opposes transportation of nuclear waste across Native American lands. Native American Tribes should not have to bear the burden of nuclear waste being transported through tribal lands. If there are not any alternative routes for the transportation of nuclear waste, except through Indian lands, the NRC and its' licensees must assure the safety of the residents and the environment on reservations.

Best Regards,


Marvin Cota, Chairman
Shoshone-Paiute Tribes

xc: Council Members
Lee Robert
Marcie Phillips
Herman Atkins